

IOWA RACING AND GAMING COMMISSISON

MINUTES

NOVEMBER 8, 2007

The Iowa Racing & Gaming Commission (IRGC) met at Stoney Creek Inn & Conference Center, 5291 Stoney Creek Court, Johnston, Iowa, on November 8, 2007. Commission members present were Kate Cutler, Chair; and Commission members Diane Hamilton, Greg Seyfer and Toni Urban. Commissioner Gerry Bair was absent.

Chair Cutler called the meeting to order at 8:30 AM, and requested a motion to approve the agenda. Jack Ketterer, Administrator of IRGC, advised the Commission of one correction – Item 8 should read Horsemen's Benevolent and Protective Association, not the Iowa Thoroughbred Breeders and Owners Association. Commissioner Seyfer moved to approve the agenda as amended. Commissioner Hamilton seconded the motion, which carried unanimously.

Chair Cutler moved to the approval of the minutes from the October 9, 2007 Commission meeting, and requested a motion. Commissioner Seyfer moved to approve the minutes from the October 9 Commission meeting as submitted. Commissioner Urban seconded the motion, which carried unanimously.

Chair Cutler called on Mr. Ketterer for announcements. Future Commission meetings are as follows:

- December 2007 – No Meeting
- January 10, 2008 Commission Meeting – Stoney Creek Inn, Johnston, IA (Submissions due by December 26, 2007)
- February – No Meeting
- March 6, 2008 Commission Meeting – Stoney Creek Inn, Johnston, IA (Submissions due by February 21, 2008)
- April 17, 2008 Commission Meeting – Diamond Jo Worth, Northwood, IA (Submissions due by April 3, 2008)

Mr. Ketterer advised that the Commission will consider the approval of the Harrah's acquisition at the January 10, 2008 Commission meeting, and will take up the gambling structure and excursion gambling boat license renewals at the March 6, 2008 Commission meeting.

Chair Cutler moved to the review of the financial audits for the Isle of Capri properties, and called on Isle of Capri Bettendorf (IOCB). Mo Hyder, General Manager, advised that the past year had been one of transition for the IOCB; however, they believe most of the challenges are behind them and are looking forward to another great year. He noted

that IOCB recently opened up their \$40 million hotel tower in Bettendorf, and that it is doing well. The tower continues to draw numerous customers from the Illinois side of the market. The Convention Center is now under construction, and is expected to open in the fall of 2008.

At this time, Mr. Hyder turned the floor over to Patrick O'Such, Senior Vice President of Finance for IOCB and Rhythm City Casino (RC). Mr. O'Such advised that IOCB's gaming revenues were approximately \$90 million; contributions back to the community totaled approximately \$105 million (including the \$40 million hotel tower), 96% of which stayed within Iowa's borders; \$40 million for the hotel tower; \$18 million in salaries, benefits, and taxes, \$21 million in gaming taxes and \$3.7 million to Scott County Regional Authority, the non-profit license holder.

In Davenport, Mr. O'Such reported gaming revenues of \$76 million; contributions back to the community totaled \$50 million, with 96% staying in Iowa; \$14 million in salaries, benefits and taxes; \$16 million in gaming taxes and \$2.5 million to Riverboat Development Authority.

Mr. O'Such advised that IOC continues to look for opportunities to reinvest in the community in both Bettendorf and Davenport.

Mr. Ketterer noted that casino revenues were down from \$101 million to \$90 million, and asked for their thoughts on the decline. Mr. Hyder indicated the facility in Riverside had some impact, with the bulk of the impact coming from the Iowa City and Cedar Rapids markets.

Chair Cutler called on Barron Fuller, General Manager, at IOC Marquette (IOCM). Mr. Fuller advised IOCM had net gaming revenues of \$37.6 million on \$3.5 million net operating income; \$3.6 million in capital investments; \$11 million in payroll; 4% of key employees are Iowa-based; contributed over \$2 million back into the community through the City of Marquette, Clayton County and Upper Mississippi Gaming Corporation (UMGC). Mr. Fuller stated that through the Marquette Chamber and UMGC, IOCM vied for one of Iowa's Great Places, but was not successful. On the flip side, they were able to bring Hollywood to McGregor for filming for five weeks.

Mr. Ketterer asked Mr. Fuller if IOCM had seen any impact on revenues from Diamond Jo Worth (DJW) or Waterloo. Mr. Fuller stated that IOCM has 13 different market segments, with Mason City being one of them. That segment accounted for approximately 5% of the revenue, and lost around 30% of that market when DJW opened up, and a little more with the expansion. They saw a small decline when Riverside opened; however, they have regained some of that business. Mr. Fuller stated that Waterloo is another marketing segment; however, many Black Hawk County residents own second homes in the Clear Lake area so they saw some increase in the summer months. They will be watching what happens in the next few months.

Chair Cutler called on Catfish Bend Casino (CBC). Gary Hoyer, CEO, presented a proposed amendment to the Southeast Iowa Regional Riverboat Commission (SIRRC) license and operating agreement concerning the Fort Madison location. The amendment was approved by SIRRC last month. CBC sought the amendment which would permit them to suspend operations in Fort Madison for an indefinite period of time. Mr. Hoyer stated the intent is to improve cash flow as a result of the operational changes. He advised that the decision to close the Fort Madison facility will reduce employee numbers; there are approximately 185 who have been employed for less than six months. Those individuals will be terminated, but are eligible for rehire. CBC will attempt to absorb as many as possible through attrition. The Burlington property sees approximately 30-40 people leave per month.

Chair Cutler called for comments or questions. Commissioner Seyfer noted that the copy provided to the Commissioners did not reflect a signature by SIRRC. Mr. Hoyer stated that SIRRC has signed the document, and that it had been sent to Mr. Ketterer. Mr. Hoyer stated that the plan is to cease operations in Fort Madison on November 15th, subject to the Commission's approval.

Mr. Ketterer asked if there was a different operating schedule for the Burlington property. Mr. Hoyer stated that the property had been operating 24/7; but changed the operating schedule to open at 8:00 AM and close at 3:00 AM on a daily basis.

Hearing no further comments or questions, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the request to amend the SIRRC Operating Agreement and the schedule change for operations in Fort Madison. Commissioner Urban seconded the motion.

Mr. Ketterer requested that Mr. Hoyer keep the Commission informed by providing the following information with the license renewal application: financial status or update on the operation, and the status of the regional interaction with Keokuk and the non-profit and how that is working with a single location. Mr. Ketterer also asked for some marketing strategy without giving up proprietary information, and a report on the job absorption.

Hearing no further comments or questions for Mr. Hoyer, Chair Cutler called for the vote on the motion. The motion carried unanimously. (See Order No. 07-105)

Chair Cutler moved to the contract approval portion of the agenda and called on Ameristar. Teresa Meyer, General Manager, presented a contract with Brad Henry Friedmutter & Associates to serve as the expansion consultant.

Mr. Ketterer asked if Ameristar explored any Iowa architects, and if so, what led Ameristar to choose this company. Ms. Meyer advised that Ameristar chose Friedmutter because of their experience in building casinos throughout the country, quality of design,

and follow-through. She indicated that she could not elaborate on whether other firms were considered as she was not involved in that part of the process.

Chair Cutler advised that the Commission has the same concerns here as they did with Harrah's expansion and utilizing Iowa vendors during their construction, and the problems and concerns that were brought to the Commission during the process. She requested that Ameristar provide the Commission with a list of Iowa vendors used and employees at each Commission meeting.

Hearing no further comments or questions, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contract as submitted by Ameristar Casino. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 07-106)

Chair Cutler called on the Isle Casino & Hotel, Waterloo (the Isle). Kim Hardy, General Manager, presented the following contracts for Commission approval:

- Lithographic Communications, LLC – Direct Mail Vendor
- Royal Buying Group – Gas Card Give-Away
- MidAmerican Energy – Utility Service Company for Waterloo

Hearing no comments or questions, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by the Isle. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 07-107)

Chair Cutler called on the Diamond Jo (DJ). Jesus Aviles, General Manager for DJW, presented the following contracts for Commission approval:

- Brunswick Bowling & Billiards – Bowling Alley in new Diamond Jo Casino Entertainment Facility
- Hewlett-Packard – Purchase Computers & Hardware
- White & Case, LLP – Specialized Legal Services

Chair Cutler asked about the Brunswick contract. Mr. Aviles advised the new DJ facility would include a 2-lane bowling alley. He indicated ground was broken for the project last week.

Hearing no further comments or questions, Chair Cutler requested a motion. Commissioner Urban moved to approve the contracts as submitted by DJ. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 07-108)

Chair Cutler called on DJW. Mr. Aviles presented the following contracts for Commission approval:

- White & Case, LLP – Specialized Legal Services

- Xenia Rural Water District – Sale of Waste Water Treatment Facility

Hearing no comments or questions concerning the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by DJW. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 07-109)

Chair Cutler called on Riverside Casino & Golf Resort (RCGR). Joe Massa, General Manager, presented the following contracts for Commission approval:

- Sysco Food Service of Iowa – Food Purchases
- Flynn Wright – Marketing Agency
- Zenders at Riverside – Spa Operating Agreement
- Roberts Dairy Company – Food Purchases
- Prodigy Promos – Promotional Give Aways
- Acushnet Company – Golf Resort Supplies
- Kehl Development Corp. – Segway Golf Package
- MidAmerican Energy – Utility – Gas Charges

Following a brief discussion concerning the Segway Golf Package, Chair Cutler requested a motion. Commissioner Urban moved to approve the contracts as submitted by RCGR. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 07-110)

Chair Cutler called on Lakeside Casino. Damon Butler, General Manager, presented the following contracts for Commission approval:

- AC Coin & Slot Service Company – Slot Leases & Parts & Supplies
- Active Electronic Services – Parts for Surveillance Equipment (RP)
- Alliant Energy – Gas & Electric Service
- Aristocrat Technologies, Inc. – Slot Lease, Hardware & Software Maintenance Agreements, Parts & Supplies
- Bally Gaming Systems – Slot Leases, Parts & Supplies
- Clarke County Development Corp. – Contribution to Fund Terrible's Lakeside Casino
- Community Activities Fund (RP)
- ColorFX – Marketing Services
- Core-Mark International – Purchases for Resale at the C-Store – Candy, Food & Supplies
- The Des Moines Register – Marketing Services – Advertising
- Golden Eagle Distributing – Purchase Beer for Resale at Casino and C-Store
- Holmes – Murphy – Property, Casualty, Liability & Workers Comp Insurance
- International Gaming Technology – Lease of Slot Machines, Parts & Supplies
- Iowa Megajackpots – Slot Machines Leases

- Loffredo Fresh Produce Inc. – Purchase Fresh Produce for Kitchen
- Loomis Company – Third Party Administrator for Self Funded Health Insurance
- Martin Brothers Distributing – Food and Supplies for Kitchen
- McKinley Inc – Purchase Resale Items for the Gift Shop
- Metro Fish – Food and Supplies for Kitchen
- Global Payment Check Services (NDC) – Patron Check Processing Guarantee Service
- Osceola Municipal Services – Water and Sewer Service
- Pepsi – Beverages for Customers/Employees and Resale
- Principal Financial Group – 401K and Dental Insurance
- Reinhart Food Services – Food and Supplies for Kitchen
- Shuffle Master – Lease Games and Table Supplies
- Sigler Companies – Purchase Resale Items for the Gift Shop
- Spurrier Oil Co., Inc. – Fuel Purchases for Resale at C-Store
- Vernon & Company – Purchase Resale Items for the Gift Shop
- Whitfield & Eddy PLC – Legal Services
- WMS Gaming Inc. – Lease of Slot Machines/Parts/Supplies

Hearing no comments or questions concerning the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contracts as submitted by Lakeside. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 07-111)

Chair Cutler called on Wild Rose Emmetsburg (WRE). Tom Timmons, Vice President of Operations, presented a contract with McAninch Corporation for the removal of water from under the casino and construction of an amphitheater. He stated that he presented six contracts for the same scope of work last month, but when the project was put out for bid, none of the local contractors' work schedules allowed them to bid on the project. WRE is now in the process of soliciting bids for the project. Mr. Timmons advised that the water is out from under the casino, and now they are looking for someone to build the dike.

Commissioner Hamilton asked if WRE is planning on completing this project yet this year. Mr. Timmons indicated that was the goal, but the main goal was to get the water out from under the casino floor before it froze this year.

Hearing no further comments or questions concerning the contract, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contract as submitted by WRE. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 07-112)

Chair Cutler called on IOCM. Mr. Fuller presented the following contracts for Commission approval:

- Hartford Life Insurance – Employee Insurance
- All Star Promotions – Marketing Redemptions
- Wells Fargo – Credit Card Payments
- Bridgeport Inn – Guest Lodging

Commissioner Urban asked about the Bridgeport Inn contract. Mr. Fuller advised that Bridgeport Inn is a hotel located in Prairie du Chien, Wisconsin. He noted that the hotel located next to the property, as well as IOCM's own hotel, only have 25 rooms each.

Hearing no further comments or questions, Chair Cutler requested a motion. Commissioner Urban moved to approve the contracts as submitted by IOCM. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 07-113)

Chair Cutler called on Dubuque Greyhound Park & Casino (DGP&C). Bruce Wentworth, General Manager, presented a contract with IKON Office Solutions for a copy machine lease.

Hearing no comments or questions concerning the contract, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the contract as submitted by DGP&C. Commissioner Hamilton seconded the motion, which carried unanimously. (See Order No. 07-114)

Chair Cutler called on Horseshoe Casino/Bluffs Run Greyhound Park (HSC/BRGP). Jeannie Magdefrau, Vice President of Finance, presented a contract between HBR Realty Company and Iowa West Racing Association for the third amendment to the lease, which allows an easement for utilities for the planned hotel.

Hearing no comments or questions concerning the contract, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the contract as submitted by HSC/BRGP. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 07-115)

Chair Cutler moved to the next agenda item – the 45-day Plan for the 2008 Live Race Meet at BRGP. Rory DeSantiago, Director of Racing, addressed the season approvals for the 2008 racing season.

Mr. Ketterer stated that the Commission staff appreciated being kept up-to-date on the changes in racing officials. He advised that Dr. Keith Soring, Interim Director of Racing, had prepared a summary of the 45-day season approval submission. Mr. Ketterer requested that BRGP keep up with the export simulcast approvals.

Hearing no comments or questions concerning the season approval submission, Chair Cutler requested a motion. Commissioner Seyfer moved to approve the 2008 Season Approvals for BRGP, subject to the staff recommendation that BRGP staff continue to

submit simulcast schedule requests for approval by IRGC staff to insure compliance with all regulatory requirements. Commissioner Urban seconded the motion, which carried unanimously. (See Order No. 07-116)

Chair Cutler moved to the next agenda item – a presentation by the Iowa Horsemen's Benevolent and Protection Association (IHBPA) concerning the 2008 Live Race Meet at Prairie Meadows Racetrack & Casino (PMR&C). Leroy Gessman, President of the Iowa HBPA, stated that the IHBPA represents over 3,000 horsemen that participate in racing at PMR&C and breeders across the state. Mr. Gessman advised that the thoroughbred association had not yet reached an agreement with PMR&C for the 2008 live race meet, noting this will make the second year in a row they have come before the Commission in order to resolve issues. He indicated the group is in the same position as last year; they are looking for stability, increased purses and racing opportunities, and to make PMR&C an attractive facility to out-of-state horsemen so they will come for the live race meet. Mr. Gessman stated the negotiating committee has been talking to PMR&C about having one thoroughbred meet rather than having a mixed meet; pointing out that several scenarios have been presented. At the first meeting with PMR&C, the thoroughbreds were given the same plan the Commission was given at the October meeting, and the calendar presented today is a reflection of that plan – a 51-day thoroughbred meet and 35-day mixed meet. PMR&C also presented the thoroughbred association with a three-year plan that continued to grow the thoroughbred meet further into July, which the IHBPA voted on and accepted. At a second meeting between IHBPA and PMR&C, the IHBPA was advised that calendar has been removed from the table, and the race meet schedule was back to the old schedule. Mr. Gessman stated that a flaw of the current race schedule is that thoroughbred owners have to leave during the mixed meet and there is no place with a new meet at that time. The horsemen are not able to go to an existing meet as the barns are already full. The IHBPA is seeking a thoroughbred meet that goes through the end of July as that would create a circuit for thoroughbred horsemen – Oaklawn Park in the spring, PMR&C in early summer, and Remington in late fall. Mr. Gessman suggested utilizing the 51-35 day schedule with approximately 711 racing opportunities for thoroughbreds during that time period.

Mr. Gessman moved to the issue of purses, stating that PMR&C needs to be competitive with the surrounding tracks in the Midwest, noting that he has provided the Commission with a listing of the average overnight purses at the Midwestern tracks with which PMR&C competes for horses. He indicated the thoroughbreds would like to see an average purse of \$18,111, which would provide a competitive edge, straight through the thoroughbred only and mixed meets. In order to reach that level and fund the stakes races, the IHBPA would be asking for \$17.5 million for purses. Based on the purse levels at the other tracks, Mr. Gessman indicated horsemen would choose Louisiana Downs or Lonestar over PMR&C or some of the other tracks listed due to the longer race meets and higher purse levels.

Mr. Gessman stated that during the 2002 race meet, the thoroughbreds received \$17.5 million, which decreased by 25% in 2003, 2004, and 2005. At that point, legislation was

passed requiring a minimum of 11% of adjusted gross revenue, and purses have been increasing over the last two years. Mr. Gessman requested that the Commission consider the IHBPA's plan to help make PMR&C a place where thoroughbred horsemen want to come and participate.

Mr. Gessman referenced the economic impact to Polk County of approximately \$8-9 million while the thoroughbred horsemen are at PMR&C. That money is re-spent within the county as the horsemen are buying feed, supplies, and paying vet bills, jockeys, and trainers, which then spend their money in the area.

Mr. Gessman stated that healthy purses and increased racing opportunities will help strengthen the breeding industry which has also seen a decline since the purses declined in 2002. Noting that he owns a transportation company, Mr. Gessman advised that he has noticed a decline in the number of mares being brought to Iowa to be foaled, which he also linked to the decline in purses. His customers are indicating that the decline is directly related to the purse structure and the uncertainty surrounding racing in Iowa.

Mr. Gessman asked the Commission to give the IHBPA's plans some consideration as they believe it will work well for Iowa racing, the thoroughbred industry and the thoroughbred owners around the country.

Mr. Ketterer informed Mr. Gessman that he had advised the Commission members about the meeting between the IHBPA and staff. He thanked Mr. Gessman for the information provided today as it addresses a number of relevant factors regarding the number of performances and purses. Mr. Ketterer stated that during the meeting one of the comments relating to purses was that the thoroughbreds were receiving 81.37% of total purses that PMR&C indicated was available using 11% of net gambling receipts, and that the IHBPA indicated they felt their share should be 83%. Following a discussion on that issue, staff advised the IHBPA to put together some information to present to the Commission. Mr. Ketterer advised that if the IHBPA were to receive 83% of the total purse money, they would have received an additional \$318,000 for purses. He informed the Commission that was what the IHBPA was looking for, or approximately \$16.1 million. He asked how the \$17.5 million figure was reached, whether this was the new figure they arrived at following their research in gathering the information presented today; or if that it is the ideal level to make PMR&C competitive.

Mr. Gessman concurred that the IHBPA did indicate 83% during the meeting. The IHBPA felt that Commission staff did not want to talk about purses in percentages, so they converted the figure to dollars. Mr. Ketterer asked if the IHBPA did receive 83% of the purse money, would it equal \$17.5 million. Mr. Gessman indicated that was correct. He advised that the IHBPA ran the numbers, after reviewing purse information from the Thoroughbred Times and seeing where PMR&C fell within those numbers, this is the amount the IHBPA feels is necessary in order to be competitive. He stated that \$16.1 million would be more acceptable than the amount offered when the parties first started talking, but does not raise the average purse over the \$18,000 level.

Mr. Ketterer asked how IHBPA calculated the numbers to arrive at \$17.5 million. He stated that when staff took the number of races run in 2007, which is about the same as the number proposed in the amended submission by PMR&C (around 660-665) and divided that by the \$15.8 million proposed by PMR&C, it equaled approximately \$23,000 for average purse. Seven hundred eleven performances divided by \$17.5 million comes to approximately \$23-24,000.

Mr. Gessman advised that the IHBA deducted the Iowa supplement and stake races from the \$17.5 million, and then deducted the stakes races from the number of performances for a total of 671 overnight races. They then used the \$12.15 million left from the \$17.5 million and divided that by 671.

Mr. Ketterer clarified his understanding that IHBPA does not consider the supplement money to be purse money. Mr. Gessman indicated they do, but were trying to figure the purses in the same manner as Thoroughbred Times so that the IHBPA number would look comparable to the numbers in Thoroughbred Times for the tracks in other jurisdictions. Mr. Ketterer asked if the numbers presented would be equivalent to the numbers for those states. He indicated that some of them include supplement money in the purse. Mr. Gessman stated that the chart in Thoroughbred Times gives total purses, average purse, and average overnight; he indicated IHBPA was working with the average overnight purse figure, which would take the stakes races out of the purse level before it is divided.

Mr. Ketterer noted that 20% of the total purse amount received by the horsemen from PMR&C is set aside for the owners of winning Iowa-bred horses, and bonus money, which is added to the winning purse. As an example, if a horse wins a race with a \$20,000 purse, with the winner's share being \$12,000, the winning owner could receive an additional \$3,000 if his horse is an Iowa-bred. Mr. Gessman stated that the IHBPA used the average purse, which was low to start, as there are some tracks with significantly higher stakes races so the average purse with stakes races included is distorted. Mr. Gessman, referencing the Iowa-bred supplement purse money, noted that it is used to pay breeders' and stallion awards. He pointed out that the Iowa Thoroughbred Breeders and Owners Association (ITBOA) is in charge of the supplement money, and also utilizes a portion of those funds for their own stakes races.

Chair Cutler asked Mr. Gessman to clarify his comment about "the uncertainty of racing in Iowa". Mr. Gessman explained that the horsemen sometimes get the feeling that racing is not wanted at PMR&C, not necessarily by PMR&C, but by the community and Polk County. He noted there are certain individuals that do not want racing at PMR&C; they make it well known, and try to take action politically to attempt to minimize horse racing at PMR&C, which causes uncertainty in the industry.

Mr. Gessman stated that when a horse is bred, sometime around Valentine's Day, the breeder is making decisions that will affect the program three or four years down the road

from 2008. Foals born next year will not run for 3-4 years, and any amount of uncertainty makes it difficult to make breeding decisions.

Commissioner Hamilton asked what steps Mr. Gessman felt needed to be taken to improve the community's feelings about racing at PMR&C. Mr. Gessman indicated greater promotion of the sport and more community involvement would be a start. He conceded that some individuals will not change their mind regarding this matter regardless of what is done. Commissioner Hamilton asked if he had tried talking to some of those individuals. Mr. Gessman answered in the affirmative. He stated that the purse decline in 2002 was an attempt to try and appease some of those individuals against horse racing. He noted that Jim Rasmussen indicated he felt it would be a way to appease those individuals; however, they only wanted more concessions.

Hearing no further comments or questions for Mr. Gessman, Chair Cutler moved to the racetrack license renewal, granting of race dates and renewal of the racetrack enclosure gambling license for PMR&C. Gary Palmer and Derron Heldt, General Manager and Director of Racing respectively, were present to answer questions.

Mr. Heldt noted that the Commission asked them to return in November, and since the October meeting, PMR&C has submitted a new plan. He advised that the Iowa Harness Horsemen's Association (IHHA) and the Iowa Quarter Horse Racing Association (IQHRA) have signed three-year agreements with PMR&C, which is reflected in the calendar submitted to the Commission last week. Between the October meeting and today, PMR&C has met with the IHBPA in an attempt to reach a 3-year agreement, but have been unable to do so.

Mr. Ketterer asked Mr. Heldt to provide some insight into PMR&C's philosophy for the change. Mr. Heldt stated PMR&C took the Commission's concerns into consideration regarding the number of races per performance. On the previous calendar, PMR&C had ten races per day during the months of June and July. Based on the Commission's concerns regarding the racing surface and the safety of racing animals, PMR&C felt it would be better to reduce the number of races to nine as it would be better for the horses at PMR&C as they would not have return to run another race so soon. The calendar for the Mixed Meet in September reflects five thoroughbred races per day versus six.

Mr. Ketterer asked about the 51-35 race calendar for the thoroughbred and mixed meet races versus the 47-43. Mr. Heldt stated that for the 51-35, PMR&C made the second week in July part of the mixed meet versus thoroughbred only, and added an additional week in September. Mr. Ketterer asked PMR&C's thought process in making that change. Mr. Heldt advised that PMR&C has been running that type of meet for the last three years; and while they do understand the arguments presented by the industry concerning creating a circuit among some racetracks, PMR&C does not believe those changes would occur for the 2008 meet. Another aspect was meeting with the quarter horse group in an attempt to deal with their concerns and reach a 3-year agreement. Mr. Heldt stated that from November 2006 through January 2007 when PMR&C came before

the Commission with their 45-day Season Approval, they have been attempting to enter into 3-year agreements with all three horsemen's groups. He stated that in order to get 3-year agreements with the quarter horse and harness groups, it was necessary to make some changes to the proposed live race meet calendar. Mr. Heldt advised that PMR&C worked very hard to achieve those agreements.

Commissioner Urban advised Mr. Heldt that she appreciated his comments about the safety of the horses, which is a concern of the Commission, and the fact that PMR&C is installing a new racing surface. She wondered if there would be a reduction in the number of accidents and deaths, and whether those could be attributed to the racetrack surface or the fact the horses were racing too often.

Hearing no further comments or questions for PMR&C at this time, Chair Cutler called for comments from the IQHRA or IHHA regarding PMR&C's submission.

Matt Eide, representing the IHHA, thanked PMR&C staff for their diligence and hard work in order to achieve the 3-year agreement. He noted that it is not perfect, but the IHHA does support the submitted agreement and feels it is fair.

Butch Hammer, representing the IQHRA, stated that when they started their negotiations with PMR&C, they indicated the need for a longer window due to the nature of the industry with the two-year old futurities. Another reason for starting the mixed meet earlier in July was that a significant number of horses come to PMR&C from Remington, whose meet ends the first part of June. The lengthening of the mixed meet provides a longer racing window, provides some stability, and the 3-year agreement provides the industry with an opportunity to plan. Mr. Hammer advised the number of quarter horses is declining due to the one-year agreements signed the past couple of years. He noted that the quarter horse group also saw a 25% decline in their purse money and are just now getting back to where they should be in order to be competitive with the premier tracks in the county. Mr. Hammer stated the IQHRA considers PMR&C to be one of the premier quarter horse meets in the country.

Mr. Ketterer, referring to the 51-35 split race calendar submitted to the Commission by the IHBPA which also included 8 days of quarter horse only racing following the mixed meet in a two-week time frame in order to preserve the time frame agreed to and the number of racing opportunities, asked Mr. Hammer to share his feelings on that calendar. Mr. Hammer stated he was out-of-state when the calendar was submitted and did not have any idea it was being submitted. He stated that over the last couple of years, the IQHRA has filled its races, and has had an 8 point or better average per race. He believes the quarter horse association is on the right track with four races per day, with the ability to run a fifth race if there are enough horses to fill the race. Mr. Hammer stated the intent is to fill the races, and he is confident that with only 4 or 5 races per day they can do so and put on a good racing program for the public. Mr. Hammer advised that the IQHRA would prefer not to run 8 days that are strictly quarter horse races. Mr. Hammer stated that he spoke with Troy Buck, Executive Director of American Quarter Horse Racing

(AQHRA), and it is AQHRA's opinion that a mixed meet is a better meet for all concerned.

Chair Cutler called for any additional comments or questions. Chair Cutler stated that Mr. Ketterer has done an excellent job in keeping the Commission informed, and expressed the Commission's appreciation for all of the information received from the horsemen and PMR&C. She indicated the Commission appreciated the good faith effort put forth by everyone to reach a consensus. Chair Cutler stated that the amended calendar appears to meet the needs of most of the parties involved. Chair Cutler advised the Commission would also consider the contracts in the motion. The following contracts were submitted by PMR&C for Commission approval:

- Cash Systems, Inc. – 3 Year Contract for Casino Guest Credit Card Cash Advance Services
- Clear Channel Broadcasting, Inc. – Advertising Expense
- Control Installations of Iowa – Surveillance Equipment
- Garner Printing – Printing Services
- Global Payments – Casino Guest Check Cashing Services
- IGT – Table Game Equipment
- Iowa Harness Horsemen's Association – 3 Year Standard Bred Agreement
- Iowa Quarter Horse Racing Enterprise, Inc. – 3 Year Quarter Horse Agreement (RP)
- Occupational Health Center, PC – Company Doctor and Medical Review Officer

Mr. Ketterer advised that the contracts with the Iowa Harness Horsemen's Association and the Iowa Quarter Horse Racing Enterprise, Inc. should be deferred until the January meeting as the Commission is interpreting the statute to mean that the horsemen's agreements are to be submitted simultaneously, and at this point, there is no agreement with the IHBPA.

Hearing no further comments or questions concerning PMR&C's license renewal or the contracts, Chair Cutler requested a motion. Commissioner Seyfer moved to approve PMR&C's license renewal with the amended calendar, race dates, racetrack enclosure gambling license, and the contracts as submitted, excluding the horsemen's agreements. Commissioner Seyfer included a provision that if there is a sufficient inventory of horses available during the thoroughbred and mixed meet; an additional race could be run. Commissioner Hamilton seconded the motion. The motion carried unanimously. (See Order No. 07-117)

Mr. Ketterer asked Mr. Palmer to carefully consider the following prior to answering. He noted that the harness and standardbred groups have chosen their direction with PMR&C, with an emphasis on more local racing, and PMR&C has agreed, outside of the purse structure, to support races at the county fair level. The purse structure offered to the quarter horse group puts them in the top five meets in the country for purses. Mr. Ketterer stated that he does not feel it is realistic for the thoroughbred group to expect to

be in the top five considering the tracks in Florida, New York, Southern California, or Kentucky and the resources they have to offer. On the other hand, what they have submitted is realistic in order to be competitive in the Midwest region. Mr. Ketterer posed the following question to Mr. Palmer:

Is it a priority with PMR&C and its Board of Directors, based upon \$200 Million in gaming revenue upon which purse receipts are based, to have a thoroughbred and quarter horse racing program that is the best or equal to the best in the region, and attract the best trainers, jockeys, and fans to PMR&C?

Mr. Palmer indicated that he could not speak for the Board, even though there is a lot of support for horse racing on the board. Speaking for himself and the Racing Department, Mr. Palmer stated that was exactly what they are seeking to achieve. He indicated they like horse racing, and believe it is a great venue for them, along with the casino and other venues. Mr. Palmer advised that it is PMR&C's goal to be the best, and they will do everything within their ability to be the best possible facility.

Mr. Ketterer then asked the second half of his question: Or is PMR&C and its Board only interested in allocating the minimum amount for purses and other resources in order to fulfill the statutory and regulatory requirements?

Mr. Palmer again indicated that he could not speak on behalf of PMR&C's board, but stated that PMR&C's philosophy is to maximize everything they have to its best.

Mr. Ketterer stated that it would be interesting to see if the Board would pass a resolution mirroring the thoughts just expressed by Mr. Palmer. Mr. Palmer indicated that he would present the idea.

Chair Cutler stated that she felt the above suggestion was appropriate in light of the minimum of 11% which PMR&C is willing to allocate to supplement purses. She believes the real discussion is how much money the horsemen's groups are receiving, and how it affects the ability of PMR&C to attract quality horses, trainers, etc. She requested that a response be given at the January 2008 Commission meeting.

Chair Cutler moved to the hearings for RCGR that are before the Commission:

- Riverside Casino & Golf Resort – For Violation of Iowa Code § 99F.4(22) (Voluntary self-exclusion)
- Riverside Casino & Golf Resort – For Violation of Iowa Administrative Code 491-5.4 subparagraph 8 (approval of contracts and business arrangements)

Mr. Ketterer advised the Commission members that a Stipulated Agreement had been reached with RGCR with respect to the individual who had completed the state-wide self-exclusion form at PMR&C. The individual contacted the Iowa Gaming Association on August 16, 2007 about continuing to receive promotional mailings from RCGR. As it

turned out, her information was downloaded by RCGR's Players Club on August 15, which precipitated the removal of her name from the direct mailing list. Mr. Ketterer stated that the Commission and RCGR have agreed to a \$20,000 penalty consistent with the Committee's recommendations on this issue last spring.

Moving to the second hearing regarding RCGR, Mr. Ketterer advised that a Stipulated Agreement had also been reached in this matter. This hearing pertains to several contracts that were not timely submitted for Commission approval that met the criteria for submission and Commission approval. Most have been submitted and approved over the last couple of meetings. Some of the contracts go back to 2006. Mr. Ketterer stated that the Commission and RCGR have agreed to a \$10,000 penalty for the delinquent submission of contracts.

Mr. Ketterer recommended approval of both Stipulated Agreements.

Chair Cutler called for any questions or comments. Mr. Massa assured the Commission that RCGR takes the issue of problem gambling very seriously; and underscored the difficulty in enforcing the self-ban provision. He pointed out that people who ban themselves later change their mind. Mr. Massa noted that thousands pass through on a daily basis, which presents a challenge in identifying those on the self-exclusion list. He indicated there is a need to match the complete name, address, and age, etc to the exclusion list.

Chair Cutler asked Mr. Massa if RCGR had established a new procedure to help catch these individuals. Mr. Massa advised there is nothing wrong with RCGR's procedures. He noted there are over 2,200 people on the self-exclusion list. He stated that if someone on the list decides they want to gamble and are willing to take the risk of being caught, they will do so. He suggested establishing some type of penalty to be assessed against those individuals. Mr. Massa stated that RCGR is not intentionally soliciting individuals on the self-excluded list.

Mr. Ketterer stated that during discussions with Mr. Massa and Wes Ehrecke, Executive Director of the Iowa Gaming Association, he expressed the opinion that the enforcement of the self-excluded list is more of a challenge than they anticipated. He suggested it would be beneficial for the licensees to convene a meeting of the individuals within their organizations who are responsible for compliance to share their various procedures, software, and ideas on what is the best and most effective way to prevent situations where people are presenting false identification or they need to be excluded from mailings, and take a proactive stance. Mr. Ketterer stated the Commission is not looking to see how many licensees they can have before them every month in order to levy administrative penalties. He indicated the licensees should be interested in finding ways to deter these individuals from returning. Mr. Ketterer concurred with Mr. Massa that the statute does include language giving a disclaimer to the State and the licensees as far as any liability to these individuals. The facilities are not expected to be able to identify everyone on the

list. The only way to identify these individuals is through identification, but one way to support their decision to put themselves on the list is to not send future mailings.

Hearing no further comments or questions concerning the Stipulated Agreements, Chair Cutler requested a motion. Commissioner Hamilton moved to approve the two Stipulated Agreements entered into between the Commission and RCGR. Commissioner Seyfer seconded the motion, which carried unanimously. (See Order No. 07-118)

Following a short break, Chair Cutler moved to the hearing for Lena Gaines-Keatley. Mr. Ketterer advised that this hearing is an appeal of an Administrative Law Judge's (ALJ) Decision, and is not an evidentiary hearing. The only issue before the Commission is whether or not the ALJ made an error in his Findings of Fact or Conclusions of Law. He stated the Commission would receive 5-10 minutes of oral argument from the attorneys representing both sides, and then 2-3 minutes of rebuttal. At that time, the Commission will either make a decision, or go into Executive Session to deliberate and return to open session to announce their decision.

Peter Bratney, of the Brick Gentry Law Firm, was the legal counsel for Ms. Gaines-Keatley regarding the ALJ's Decision to deny the renewal of her gaming license. He conceded that Ms. Gaines-Keatley has made some mistakes in her life, between 1989 and 1997 she was convicted of a substantial number of serious and aggravated misdemeanors – driving while suspended, possession of a controlled substance, and prostitution. Mr. Bratney advised that she has paid her debt to society, has made the decision to not make any excuses for past mistakes and to turn her life around. Mr. Bratney stated that Ms. Gaines-Keatley has been clean and sober for ten years. She graduated from Des Moines Area Community College (DMACC) in May 2003, and graduated from Grandview College in December 2006. He stated that Ms. Gaines-Keatley has been an exemplary employee in every position she has held, including her job as a server at PMR&C. Mr. Bratney noted that Ms. Gaines-Keatley has applied for, and obtained, her Iowa Real Estate License, and her license from the State Board of Educational Examiners.

Mr. Bratney stated that Iowa Administrative Code Section 491-6.5 provides that a license shall be denied if an applicant has multiple convictions of simple misdemeanors, including those involving the entry of a deferred judgment and adjudication of delinquency for alcohol-related offenses unless Commission representatives determine that sufficient evidence of rehabilitation exists. Mr. Bratney stated that Ms. Gaines-Keatley was not here to make excuses for her past behaviors, nor to ask for the Commission's forgiveness; but to ask for compassion and understanding. Mr. Bratney informed the Commission that Ms. Gaines-Keatley would be addressing them, and asked that they listen with an open mind in order to judge for themselves whether or not she is sufficiently rehabilitated.

Ms. Gaines-Keatley stated that as a recent graduate of DMACC in 2003, she applied at hotels, hospitals, and retail outlets that are open 24 hours, including PMR&C. She had an interview less than a week after doing so. At the time of the interview, Ms. Gaines-

Keatley informed the interviewee that she had a record; the individual advised Ms. Gaines-Keatley that as long as they occurred more than five years ago, it was OK. In 2003, it would have been more than five years since her last conviction. Ms. Gaines-Keatley stated that at that point in her life, she was about quantity, not quality. She completed the license application. She stated that she had never been told how to present herself correctly in these types of situations, and was still in denial about the charges. Ms. Gaines-Keatley stated that it was not her intent to misrepresent herself on the application, nor did she understand the significance of the license.

In 2004, Ms. Gaines-Keatley returned to school, and PMR&C reimbursed her for the first year of school. PMR&C offered her a supervisory position, which she declined as it would interfere with school. In 2005 she reapplied for a license and disclosed everything, as she thought she had done previously. She still did not consider the misdemeanor convictions to be that bad, and was in need of a job and a break. She admitted that she still did not list the convictions on the application as she was still in denial. It was at this time that Ms. Gaines-Keatley started to pursue other interests. She moved to part-time employment at PMR&C in 2006, noting they worked with her to help her further her education and continued to reimburse her for costs.

In 2007, she completed an application with the Board of Education Examiners and also for her real estate license. She noted these entities are not as strict as the Commission, and reiterated her previous comment that it was never her intent to misrepresent herself on the license applications. Following the third license renewal at PMR&C in 2007, she attempted to pursue a career in the education field. She noted that she had contacted one of the attorneys on the Board of Education in order to ascertain whether or not she would be able to obtain a license with her past history. Ms. Gaines-Keatley stated that she did not understand that the license would not allow her to obtain a job. The Board of Education granted her a provisional professional license, with the requirement that she would have to be hired by a school district, which she was unable to achieve. She returned to a full-time position in fine dining at PMR&C. On March 28, 2007, she was called to the Commission office where she was informed that her license was being denied. She was informed that the previous licenses had been issued by mistake, and that she slipped through the cracks.

Dave Van Compernelle, representing the Commission, indicated that he could appreciate what Ms. Gaines-Keatley said; that he could empathize with her, even though that is not the task before the Commission today. He stated that much of what Ms. Gaines-Keatley just told the Commission was also told to the Gaming Representative at PMR&C and the ALJ. The Gaming Representative did make the decision to deny the license, which was upheld by the ALJ. Mr. Van Compernelle advised that unless that Decision was based on an error, either in fact or law, the Commission has to uphold the ALJ's Decision. He directed the Commission's attention to the Notice of Appeal, which contains numerous facts and circumstances, but no allegation that the Gaming Representative's or ALJ's Decision was made in error. Mr. Van Compernelle stated that the facts are simple and straight forward; Ms. Gaines-Keatley was convicted of numerous serious offenses, which

occurred over a long period of time, as outlined on Page 2 of the ALJ's Decision. He noted that Ms. Gaines-Keatley made much of the fact that it has been quite some time since the convictions occurred; but when rehabilitation is taken into account, the Commission has to contend with the falsification or failure to fully disclose the convictions on the license application, which is also a deniable offense.

Mr. Van Compernelle referenced Iowa Administrative Code Section 491-6.5, which the Gaming Representative used to support his denial of the license, Section 6.5(1)(d) states: "A license shall be denied if, ...":

- 6.5(1)d(2) Conviction of a drug-related offense;
- IAC 491-6.5(1)d(e) states: "... shall be denied if an applicant has a conviction of a serious or aggravated misdemeanor;
- 491-6.5(1)d(f) references multiple convictions of simple misdemeanors;
- 491-6.5(1)d(g) references multiple convictions
- 491-6.5(1)d(n) references falsification of the license application.

All of the above references indicate the license shall be denied unless the Gaming Representative determines there is sufficient evidence of rehabilitation. In this instance, the Gaming Representative determined that rehabilitation did not exist due to the falsification of the application. Mr. Van Compernelle stated that the ALJ affirmed the Gaming Representative's Decision, and asked the Commission to uphold the ALJ's Decision.

Mr. Van Compernelle again stated that he sympathized with Ms. Gaines-Keatley's situation, but quoted a portion of the ALJ's Ruling: "Had Gaines-Keatley conducted herself in that fashion with regard to her occupational licenses, this action may not have been necessary." He noted this comment was made after the ALJ applauded Ms. Gaines-Keatley for the strides she made to get her life back on the right track and to improve her life; however, the ALJ conceded that she had not properly completed the license applications, showing a lack of rehabilitation.

Chair Cutler called on Mr. Bratney for his rebuttal comments. Mr. Bratney stated Mr. Van Compernelle was correct; the reasons cited above were the reasons Ms. Gaines-Keatley's license renewal was denied; however, each rule cited includes a mechanism for the Commission and its representatives to look past the facts, records, and mistakes and to judge by their own standards as to whether sufficient rehabilitation has taken place. He stated that Ms. Gaines-Keatley has made mistakes, and has come to terms with those mistakes. He asked if those mistakes should preclude her from serving drinks or a meal at PMR&C; from obtaining a non-gaming license. He indicated that is the decision before the Commission today, and encouraged them to think about it very carefully. Mr. Bratney noted that Ms. Gaines-Keatley held a license from 2003 until 2007, and was considered to be an exemplary employee and was provided numerous opportunities by PMR&C to further her career. Mr. Bratney stated that if the Commission were to uphold the ALJ's Decision and deny the license, Ms. Gaines-Keatley would not regret having

had the opportunities provided by PMR&C. Mr. Bratney concluded his comments by stating that if the Commission determined she was not qualified to hold a non-gaming license after hearing all of the comments today, what she represents as far as rehabilitation and turning her life around, then he was not sure who would qualify.

Commissioner Hamilton stated it was her understanding that Ms. Gaines-Keatley's license was renewed twice. Mr. Bratney stated that the license was originally granted in 2003, at which time a fingerprint card was submitted for the purpose of running a background check. It is his understanding that the background check was not completed, and Ms. Gaines-Keatley was granted her license. In 2005, she reapplied and received her license without a background check, which is conducted every other re-application. In 2007, Ms. Gaines-Keatley was re-fingerprinted, and the background check was completed in order to catch anything that happened between 2003 and 2007. However, the background check picked up everything that had occurred in Ms. Gaines-Keatley's past, which prompted the decision to deny her license renewal application.

Commissioner Hamilton asked if there is any point at which a person's criminal record becomes too old or if it would stay with her and prevent her from re-applying for a license in the future.

Mr. Ketterer advised that the Commission's rules require that the Gaming Representative deny a license if the individual has had a drug conviction, a felony conviction or a conviction for theft over \$100 in the last five years. If it is longer than five years or any other kind of conviction or activity, it is up to the discretion of the Gaming Representative whether to grant the license or not.

Commissioner Hamilton asked if five years had elapsed in 2003 since Ms. Gaines-Keatley's last conviction. Mr. Bratney advised that her last conviction for a simple or aggravated misdemeanor occurred in 1997. He noted that she has had various speeding tickets since that time.

Commissioner Urban asked Mr. Ketterer if there was any precedent for overturning the ALJ's Decision. Mr. Ketterer advised that the Commission could overturn the ALJ's Decision if they determined the ALJ made an error in the Finding of Fact or Conclusions of Law.

Chair Cutler indicated she felt the Commission needed to go into Executive Session for deliberation.

Mr. Van Compernelle, in his rebuttal, noted there is nothing to preclude Ms. Gaines-Keatley from reapplying for a license and completing the application accurately, listing any new charges that may have come up recently, and submitting the application to a Gaming Representative for review. He stated that the decision to deny the license was not a "death sentence"; just that she should reapply for a license when she is rehabilitated.

Chair Cutler requested a motion to go into Executive Session. Commissioner Hamilton moved to go into Executive Session pursuant to Iowa Code Section 21.5(1)f for the purpose of discussing the decision to be rendered in a contested case conducted according to the provisions of Chapter 17A. Commissioner Urban seconded the motion, which carried unanimously on a roll call vote. Commissioner Bair was absent. (See Order No. 07-119)

Upon returning to Open Session, Chair Cutler called for a motion concerning Ms. Gaines-Keatley's appeal. Commissioner Hamilton moved to uphold the ALJ's Decision, but to allow Ms. Gaines-Keatley to reapply for a license immediately with full disclosure. She advised Ms. Gaines-Keatley that she should now fully understand what is required of her in order to keep her license. Commissioner Urban seconded the motion.

Chair Cutler advised Ms. Gaines-Keatley and Mr. Bratney that the Commission has affirmed the ALJ's Decision based upon the information provided, but she can reapply immediately for license and must make full disclosure of all previous convictions.

Hearing no further discussion, Chair Cutler called for the vote. The motion carried unanimously. (See Order No. 07-120)

As there was no Administrative Business or Public Comment to come before the Commission, Chair Cutler requested a motion to adjourn. Commissioner Hamilton so moved. Commissioner Seyfer seconded the motion, which carried unanimously.

MINUTES TAKEN BY:

JULIE D. HERRICK